IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Misc. No.17712-M of 2007

Date of Decision: 22.3.2007

Kanta Rani and another

....Petitioners.

Versus

State of Punjab and another

...Respondents.

Present:- Mr.L.M.Gulati,Advocate
for the petitioners.

****

S.S.SARON, J.(ORAL)

This petition has been filed under Section 482 Cr.P.C. seeking quashing of the FIR No.528 dated 23.9.2005 (Annexure P1) registered at P.S.Sadar, Patiala, for the offence under Section 454,379, 120-B I.P.C.

Learned counsel for the petitioners contends that a reading of the FIR does not make out any offence against the petitioners. Besides only an apprehension has been expressed that she may remove the plant and machinery or other moveable items from the premises of which she is alleged to have re-taken possession by tress-passing.

During the course of hearing it is not disputed by learned counsel for the petitioner that the charge report (challan) in terms of Section 173 Cr.P.C. has been filed in the Trial Court. In the circumstances, it is evident that the necessary material by way of the charge report (challan) filed by the police is before the trial Magistrate. Therefore, it would be more appropriate that the contentions as raised by learned counsel

for the petitioners before this Court are raised before the learned trial Magistrate at the first instance. It is well known that the Court at the time of framing charge is to sift and weigh the evidence for finding out whether a prima-facie case has been made out or not. The Court for the purpose of framing charge does not act merely as a mouth-piece or a post office of the prosecution. The total effect of the charge report (challan) and the documents are to be considered while considering the framing of charge. Therefore, this petition is premature and the petitioners may raise the contentions as raised here before the learned trial Magistrate.

Learned counsel for the petitioners has further submitted that atleast the presence of the petitioners during trial of the case may be exempted. It is submitted that in fact, the work of petitioner No.1 was being looked after by her husband in whose favour she has executed special power of attorney on 26.10.2004 (Annexure P2). In my view this matter would also more appropriately be considered by the learned trial Magistrate in terms of Section 205 Cr.P.C. In case an application is made by the petitioner for seeking her exemption during trial, the same would be considered by the learned trial Magistrate sympathetically and in accordance with law.

In the light of the above, the present petition is disposed of being pre-mature.

(S.S.SARON)
JUDGE

March 22,2007
Reema